

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JONATHAN LEE RICHES,

Plaintiff,

v.

HOWARD STERN, et al.,

Defendants.

No. C 07-6115 MJJ (PR)

ORDER OF DISMISSAL

Plaintiff, a federal prisoner proceeding pro se, filed this pro se complaint under 42 U.S.C. § 1983 against Howard Stern and Sirius Satellite Radio, Inc..

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

Plaintiff alleges that defendant Howard Stern was a victim of plaintiff's "identity theft," and as a result is "advocating" plaintiff's incarceration on the radio. Defendants are a

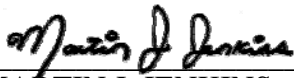
1 private individuals and a private organization. As such, they do not act under color of state
2 law, an essential element of a § 1983 action. See Gomez v. Toledo, 446 U.S. 635, 640
3 (1980). Purely private conduct, no matter how wrongful, is not covered under § 1983. See
4 Ouzts v. Maryland Nat'l Ins. Co., 505 F.2d 547, 559 (9th Cir. 1974), cert. denied, 421 U.S.
5 949 (1975). Accordingly, plaintiff has failed to state a cognizable claim for relief under §
6 1983.

7 For the foregoing reasons, this action is DISMISSED.

8 The Clerk shall close the file.

9 IT IS SO ORDERED.

10 DATED: December 21, 2007



MARTIN J. JENKINS
United States District Judge